

February 17, 2017

*Via Electronic Mail*

Mr. Neil P. Olson  
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RE: OMA Request for Review – 2016 PAC 45349

Dear Mr. Olson:

Thank you for the opportunity to respond to city of Normal attorney Brian Day's response to my petition before your office, 2016 PAC 45349.

My complaint is about specific wording and rules with the Normal Town Council's public comment policy for Council meetings that can be viewed here:

<https://www.normal.org/854/Addressing-the-Council>

Please understand I am not an attorney. I'm not a politician, nor do I have any political aspirations. I come before you as a citizen, residing in Normal, Illinois who wishes to engage with my local government in the town of Normal. I have found this process to be complicated.

My initial experience with public comment with the Normal Town Council came with my attempt to address the Council at their December 5, 2016 Council meeting in opposition to a sales tax abatement being offered to a restaurant opening in our town. I was also at the same time planning to address the Council at a Taxation Hearing to raise the property tax levy at their December 19 meeting. Being unsure of the process, I consulted their web site (linked above) for guidance. There I read rules that I viewed to be complicated, unduly burdensome on citizens and overall discouraging of public comment.

My interpretation of the rules as stated on the web site led me to believe that I could not speak at both meetings because to do so would violate the 45 day waiting period. Therefore, I forfeited speaking at the December 5 meeting so I could address the Council at the taxation hearing on December 19. This further led me to question the legality of many of the rules and thus my complaint to your office seeking a binding opinion to resolve these matters.

I understand there are many ways for a citizen to engage with the Normal Town Council in addition to public comment, including phone calls, email, and one on one meetings with Council members, all of which I have done with this Council. Yet each channel of communication has its limitations, including public comment. Your own experience communicating with this Council through email and Mr. Day's delayed response to your office proves my point. Mr. Day is late in his response to your office because, according to him, your email "was sent to the Mayor's

email account.” And, “For whatever reason, that email did not reach the Mayor” and Mr. Day was granted an extension by your office. Your office has the same email address for Mayor Koos as the rest of the town of Normal and it appears you have personally experienced the same delay and inefficiency in getting an answer from him as I have as well as others in our community.

My complaint before your office has nothing to do with the preferred mode of communication for Council members nor is Council in any position to direct citizens on how they should communicate with their elected representatives. My concern is whether or not available channels of communication are obstructed, ignored or unduly burdensome for citizens who will in turn may walk away from the process. Citizens must be assured of open, honest and transparent channels of communication that protect our rights as citizens with the unhindered exchange of ideas.

Moreover, I have not petitioned your office over exceptions to the Public Comment rules or perceived violations of those rules. My complaint questions the legality of the rules put in place by the Normal Town Council and whether or not they are a hindrance to citizen participation. Your binding opinion is requested on the rules as they are written on the town’s web site, not how they are applied.

Specifically, my complaint address six items of concern with rules the Normal Town Council has established for public comment that Mr. Day has defended in his February 10, 2017 response to your office. I thank you for this opportunity to respond to Mr. Day’s defense. I will respond in the same order Mr. Day has responded to my complaint:

1. I have objected to the use of the word “permitted” rather than “allowed” in the initial statement about public comment on the town’s web site. Mr. Day further states that the town is unable to see the semantic difference in the two words. I will concede the differences are on the surface minor, however context and personal experience often determines meaning. My concern is for clarification on who is “permitting” public comment and where this right is derived for citizens. My preferred reading would be, “The Illinois Open Meetings Act gives citizens the right to address their local government during the public comment portion of a Council meeting.” I believe this wording is more user friendly and helps clarify where our rights originate. This, however, is not a hill I choose to die on.
2. I have objected to the 2-hour registration requirement contending that this is unduly burdensome to speakers. It is very possible, if not probable that citizens may need to address their Council over a matter that has come to their attention less than two hours prior to a Council meeting. The rule as it stands now would discourage citizens from speaking because they would not always be able to provide Council a two-hour advance notice to speak. A sign-up sheet 10 or 15 minutes prior to a Council meeting should be sufficient. Mr. Day cites 2013 PAC 25965 as defense for Normal’s position, yet this is a nonbinding opinion.

3. I have challenged the requirement that comments be restricted to agenda items. Again, Mr. Day offers another nonbinding opinion as his defense, 2016 PAC 37631. Yet, I contend that many citizens participate in public comment because sometimes they have reached an impasse with their elected representatives and need their voice to be heard in public. There are important issues of public safety, infrastructure, specific neighborhood concerns that may escape the council agenda, but need to be brought to Council's attention. If government truly belongs to the people, then citizens should be allowed to address their concerns whether they're on the Council agenda or not to say nothing of a public official's need to be held accountable by citizens.
4. I have challenged time limits on speakers because of first-hand experience with the limitations of getting my message across effectively with such a short window of time. Speakers are not given ample opportunity to say all they want or need to say. In a community of just over 50,000 people, I believe more time could be allowed for speakers without harming the efficiency of the meeting.
5. I have challenged the 45-day rule which is the focus of most of Mr. Day's response. He cites no PAC cases to support Normal's position because there are none. I know of no other municipality in Illinois that has such a rule.

I have recently been advised in my interaction with Normal Town Council members of the difference between a hearing and a regular business meeting and I have learned that there is nothing in the 45-day rule that would have precluded me from speaking at both the regularly scheduled meeting of December 5 and the December 19 taxation hearing. That's helpful information and I appreciate the clarification. However, that information is not clearly stated on the web site or in the 45-day rule. Also, it must be noted that public hearings are usually held in conjunction with the regularly scheduled business meeting as was the case on December 19. So, it's confusing to say the least and the average citizen will not be able to make those distinctions. Further, I do know of two other individuals who did not speak at the December 5 meeting because they had previously spoken within the 45-day window. This information was reported in our daily newspaper The Pantagraph. I personally would have liked to have heard what they had to say, but because of this rule I did not. This is clearly restrictive of public comment.

Mr. Day asserts that the 45-day rule helps to ensure efficiency in conducting town business and he speaks about limited time available for public comment. A review of the length of Normal Town Council meetings in the last three months alone will refute Mr. Day's assertion that public comment hinders the efficiency of the meeting or limited time constraints:

11-07-16 meeting called to order at 7 pm, adjourned at 7:40  
11-21-16 meeting called to order at 7 pm, adjourned at 7:35 pm  
12-05-16 meeting called to order at 7 pm, adjourned at 8:06 pm

12-19-16 meeting called to order at 7:13 pm, adjourned at 8:05 pm  
01-03-17 meeting called to order at 7 pm, adjourned 7:10 pm (yes, this is correct)  
01-17-17 meeting called to order at 7 pm, minutes say it was adjourned at 7:03, but I'm assuming the minutes are in error.

The longest Normal Town Council meetings are usually under two hours which is rare and the shortest are under 10 minutes. On average they are under an hour in length. Mr. Day offers absolutely no proof that a citizen speaking more than once in a 45-day period during public comment would in any way hinder the Normal Town Council from running an efficient meeting. Mr. Day's assertions are ungrounded if not absurd and further evidence of the roadblocks that exist with respect to public comment in the town of Normal.

The way the rule currently stands, citizens in Normal who want to speak more than once in a 45- period will be forced into one of three scenarios, none of which produce healthy government.

- a. The first unhealthy scenario this rule could produce is my own personal experience with it. A citizen will refer to the public comment rules, conclude he cannot speak more than once in a 45-day period and forfeit his right to speak. Other citizens are then restricted in hearing what that person has to say.
- b. The second potential scenario is that citizens will be forced to seek special favors or exceptions from their government to waive the rule that will be either granted or denied at the subjective discretion of the Mayor of city manager. This places the citizen and the elected official in a very vulnerable position. This is far from being fair and impartial government.
- c. Finally, citizens may be forced to engage in a bait and switch game of "gothca politics" whereby they will seek to violate the rule in order to test its validity.

All three potential scenarios raise serious questions about the rule itself. Mr. Day then goes on to emphasize that citizens have other modes of communication besides public comment to communicate with Normal town officials. Again, Mr. Day is in no position to tell citizens what the preferred modes of communication are. In the process he totally ignores the importance of the public aspect of public comment and in effect hinders the public's access to it.

Mr. Day then wrongly interprets the one sentence about public comment in the Illinois Open Meetings Act that reads, "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The first clause guarantees citizens the right to speak at public meetings. Period. I agree that a public body has a right if not a responsibility to establish rules to ensure the free

exercise of this right. However, Mr. Day has wrongly interpreted the second clause of the sentence to mean that the Town of Normal has license to restrict the right. His emphasis should be on protecting it not limiting it. The question at hand is whether or not “the rules established and recorded by the public body” are restrictive of a citizen’s right to speak. This point is lost in Mr. Day’s pedantic sentence diagramming. The 45-day rule of the Normal Town Council clearly is restrictive.

I disagree with Mr. Day’s assertion that the 45-day rule “conforms to Constitutional requirements because it is viewpoint neutral.” The 45-day rule is not viewpoint neutral because it places restrictions on the frequency citizens can express their viewpoints. It is also discriminating against frequent speakers. Often the views expressed in public comment are in opposition to the views of public officials. Those same public officials have enacted restrictions on the expression of those views to protect themselves from public criticism, a privilege citizen’s do not have.

If speakers are restricted to only commenting on items on the Council agenda, as the current policy states, then it must be acknowledged that the 45-day rule does not allow citizens equal access to all the issues on the agenda and therefore it is not viewpoint neutral. The council agenda is different at each council meeting. Some items are time sensitive while others appear at random. The potential exists for Council to structure their agenda around speakers representing opposing views who have previously spoken within the 45-day window, intentionally restricting their comments in favor of another viewpoint or hearing no viewpoint at all.

Normal Town Council meetings are held twice a month. With the current 45-day rule citizens only have access to speak at 7 of the 24 meetings per year or only 29% of the time. Why has the Town of Normal arrived at 45 days as their magic number if it is not clearly restrictive? Why not 30 days in which case citizens would have access to speak at 10 of the 24 meetings per year or 40% of the time. Or, why not 15 days in which citizens would have access to speak at 12 of the 24 meetings per year or 50% of the time. How did the town of Normal land at 45 days? If there is no reasonable explanation for 45, 30, or even 15 days then there is no reasonable defense for the rule itself. Such limitations are not viewpoint neutral because free expression is restricted under the rule at a specific number of council meetings.

6. I have challenged the requirement for speakers to provide an address. Mr. Day has stated that this rule has not been adopted or enforced by the town. The web site states that the Mayor may ask a speaker to state his address and he consistently does. I believe this practice is a hindrance to public comment because it could potentially violate the privacy of a speaker who may not want to disclose his address for security reasons.

Conclusion. The Illinois Open Meetings Act allows citizens the right of public access to their government through public comment at public meetings. By emphasizing, even recommending

other forms of communication, the Normal Town Council has in effect discouraged citizens from participating in public comment at Council meetings. This places this right in extreme jeopardy due to rules the town of Normal has enacted that are burdensome and restrictive. When people feel as if their rights are being infringed, they will seek alternative forms of expression that are often inappropriate.

Our form of government should encourage citizens to stand up and be counted. The public aspect of public comment ensures open, honest and transparent government. It is fundamental to our rights as citizens and existed long before any form of electronic communication was ever conceived. Government officials have a right to a preferred communication mode with citizens, but they must in the process encourage and protect public comment.

I have acknowledged that Normal Town government has not only a right, but a responsibility to establish rules for public comment at public meetings. Those rules are necessary in order to protect the right of citizens to speak. The Normal Town Council has stepped beyond their legal authority by establishing rules that are burdensome to citizens and restrictive of free speech.

The 2-hour registration requirement, the requirement to speak only on agenda items, and time limits are burdensome. Yet, they still allow citizens the right to speak however limiting it may be. I would ask your office for help in providing guidance to the Normal Town Council to make these rules less cumbersome for citizens and more welcoming of public comment.

The 45-day rule, however, is the most problematic of the items I've petitioned before your office. Likewise, Mr. Day has spent the majority of his response trying to defend it. He has not made his case for keeping the rule. I know of no other municipality that has such a rule. It is clearly restrictive. Unlike the other rules that are burdensome, this rule is denying people the right to speak. I have cited my personal experience with this rule that I have since learned was a misunderstanding of the rule. Let me be clear. My complaint is not about the exceptions or violations of the rule. My complaint is with respect to the rule itself that is clearly restrictive of free speech. Government has no right to control the frequency of public comment speakers. The Illinois Open Meetings Act guarantees citizens this right and it is the responsibility of government to enact rules to protect it, not restrict it. I ask for a binding opinion from your office to resolve this impasse between citizens and their government in the town of Normal.

Thank you and I will look forward to your ruling.

Craig Stimpert

